

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**Case No. 16-2005-168835
OAH No. N2006040790**

LAURA VANINI GROBOVSKY, M.D.
1929 Lone Oak Road
Johnson City, TN 37604

DEFAULT DECISION AND ORDER

Physician and Surgeon's Certificate No. G83628

Respondent.

On or about October 31, 2005, an employee of the Medical Board of California (hereinafter "Board") sent by certified mail a copy of Accusation No. 16-2005-168835, Statement to Respondent, Notice of Defense in blank, copies of the relevant sections of the California Administrative Procedure Act as required by sections 11503 and 11505 of the Government Code, and a request for discovery, to Laura Vanini Grobovsky, M.D. (hereinafter "respondent") at her address of record with the Board, 1929 Lone Oak Road, Johnson City, TN 37604. The green certified mail receipt for the package was returned and noted that the package was delivered. (The Accusation package, along with the proof of service, is attached hereto as Exhibit 1.)

Respondent failed to file a Notice of Defense within 15 days after service of the accusation as allowed by section 11506 of the Government Code. On January 13, 2006, an employee of the Attorney General's Office sent by certified and regular mail addressed to respondent at her address of record, a courtesy Notice of Default, advising respondent of the service of the Accusation, and providing her with an opportunity to request relief from default. The green certified mail receipt was signed and returned. (Attached hereto as Exhibit 2 are copies of the Notice of Default and the declaration of service thereof.) Respondent failed to file

1 a Notice of Defense, but did send a letter stating that she contested the allegations in the
2 Accusation. (A copy of respondent's letter is attached as Exhibit 3 hereto.)

3 On or about April 25, 2006, a Notice of Hearing was served by certified mail and
4 by regular mail on respondent, and it informed her that an administrative hearing in this matter
5 was scheduled for August 3, 2006. The certified mail receipt for the package was returned and
6 noted that the package was delivered and signed for. (A copy of the Notice of Hearing and the
7 proof of service is attached hereto as Exhibit 4.)

8 Respondent failed to appear at the August 3, 2006 hearing. The Administrative
9 Law Judge found that proper notice of the hearing had been provided, and declared respondent to
10 be in default.

11 The Division of Medical Quality now proceeds to take action based upon the
12 accusation, declarations and documentary evidence on file in accordance with Government Code
13 sections 11505(a) and 11520.

14 FINDINGS OF FACT

15 I.

16 David T. Thornton is the currently the Executive Director of the Board. The
17 charges and allegations in the accusation were brought and made solely in his official capacity.

18 II.

19 On or about March 28, 1997, Physician and Surgeon's Certificate No. G83628
20 was issued by the Board to Laura Vanini Grobovsky, M.D. The certificate is renewed and
21 current with an expiration date of September 30, 2006. (A copy of the license certification is
22 attached hereto as Exhibit 5.)

23 III.

24 On October 31, 2005, an Accusation was filed by the Board alleging causes for
25 discipline against respondent. The accusation and accompanying documents were duly served
26 on respondent. Respondent filed a letter contesting the allegations of the accusation. Respondent
27 thereafter failed to appear at a duly noticed hearing, and respondent was declared to be in default.

28 IV.

The allegations of the accusation are true as follows:

On or about July 14, 2005, the State of Oregon Board of Medical Examiners issued a Final Order regarding respondent's license to practice medicine in Oregon. Under the terms of the Final Order, respondent's license was suspended for a minimum of 30 days, or until respondent complied with an order of the Oregon Board requiring her to undergo a comprehensive multi-disciplinary evaluation, and until that evaluation concluded that respondent was safe to practice medicine. The Final Order further provided that the suspension would remain in effect until respondent demonstrated that she was in full compliance with any treatment and monitoring recommendations contained in the multi-disciplinary evaluation, and required respondent to abstain from consumption of alcohol or controlled substances and to submit to random testing for alcohol or controlled substances. Following the period of suspension, respondent's license was ordered to be placed on probation. The Final Order resolved a Complaint alleging that respondent had failed to comply with an Order issued by the Oregon Board requiring respondent to undergo a multi-disciplinary evaluation to determine if she was safe to practice medicine due to possible substance abuse. (A certified copy of the Final Order issued by the Oregon State Board of Medical Examiners is attached to the Accusation, Exhibit 1 hereto.)

DETERMINATION OF ISSUES

I.

Pursuant to the foregoing Findings of Fact, respondent's conduct constitutes unprofessional conduct within the meaning of Business and Professions Code section 2305 and is conduct subject to discipline within the meaning of section 141(a).

DISCIPLINARY ORDER

Physician and Surgeon's certificate No. G83628 issued to Laura Vanini
Grobovsky, M.D. is hereby **REVOKED**.

Respondent shall not be deprived of making a request for relief from default as set forth in Government Code section 11520(c) for good cause shown.. However, such showing must be made in writing by way of a motion to vacate the default decision and directed to the

1 Division of Medical Quality, Medical Board of California at 1426 Howe Avenue, Sacramento,
2 CA 95825 within seven (7) days of the service of this Decision.

3 This Decision will become effective September 25, 2006.

4
5 DATED: August 25, 2006

6 MEDICAL BOARD OF CALIFORNIA
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

9 By Cesar A. Aristeiguieta, M.D.
10 Cesar A. Aristeiguieta, M.D., Chair
11 Division of Medical Quality
12 Consolidated Panel
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1 BILL LOCKYER, Attorney General
of the State of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 JANE ZACK SIMON
Deputy Attorney General [SBN 116564]
4 455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102
5 Telephone: (415) 703-5544
Facsimile: (415) 703-5480
6

7 Attorneys for Complainant
8

9 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 16-2005-168835

12 **LAURA VANINI GROBOVSKY, M.D.,**
1929 Lone Oak Road
13 Johnson City, TN 37604

ACCUSATION

14 Physician and Surgeon's
15 Certificate No. G83628

16 Respondent.
17

18
19
20 The Complainant alleges:

21 **PARTIES**

22 1. Complainant David T. Thornton is the Executive Director of the Medical
23 Board of California (hereinafter the "Board") and brings this accusation solely in his official
24 capacity.

25 2. On or about March 28, 1997, Physician and Surgeon's Certificate No.
26 G83628 was issued by the Board to Laura Vanini Grobovsky, M.D. (hereinafter "respondent").
27 Respondent's certificate is renewed and current with an expiration date of September 30, 2006.

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 31, 20 05
BY Allen M. M. ANALYST

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1 "(b) Nothing in this section shall preclude a board from applying a
2 specific statutory provision in the licensing act administered by the board that provides
3 for discipline based upon a disciplinary action taken against the licensee by another state,
4 an agency of the federal government, or another country."

5 E. Welfare and Institutions Code section 14124.12 provides, in part, that a
6 physician whose license has been placed on probation by the Medical Board shall not be
7 reimbursed by Medi-Cal for "the type of surgical service or invasive procedure that gave
8 rise to the probation."

9 4. Respondent is subject to discipline within the meaning of section 141 and
10 is guilty of unprofessional conduct within the meaning of section 2305 as more particularly set
11 forth herein below.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Discipline, Restriction, or Limitation Imposed by Another State)

14 5. On or about July 14, 2005, the State of Oregon Board of Medical
15 Examiners issued a Final Order regarding respondent's license to practice medicine in Oregon.
16 Under the terms of the Final Order, respondent's license was suspended for a minimum of 30
17 days, or until respondent complied with an order of the Oregon Board requiring her to undergo a
18 comprehensive multi-disciplinary evaluation, and until that evaluation concluded that respondent
19 was safe to practice medicine. The Final Order further provided that the suspension would
20 remain in effect until respondent demonstrated that she was in full compliance with any
21 treatment and monitoring recommendations contained in the multi-disciplinary evaluation, and
22 required respondent to abstain from consumption of alcohol or controlled substances and to
23 submit to random testing for alcohol or controlled substances. Following the period of
24 suspension, respondent's license was ordered to be placed on probation. The Final Order
25 resolved a Complaint alleging that respondent had failed to comply with an Order issued by the
26 Oregon Board requiring respondent to undergo a multi-disciplinary evaluation to determine if she
27 was safe to practice medicine due to possible substance abuse.

1 Attached hereto as Exhibit A is a true and correct copy of the Final
2 Order issued by the Board of Medical Examiners, State of Oregon.

3 6. Respondent's conduct and the action of the Board of Medical Examiners,
4 State of Oregon, as set forth in paragraph 5, above, constitute unprofessional conduct within the
5 meaning of section 2305 and conduct subject to discipline within the meaning of section 141(a).

6 **PRAYER**

7 **WHEREFORE**, the complainant requests that a hearing be held on the matters
8 herein alleged, and that following the hearing, the Division issue a decision:

9 1. Revoking or suspending Physician and Surgeon's Certificate Number
10 G83628, heretofore issued to respondent Laura Vanini Grobovsky, M.D.;

11 2. Revoking, suspending or denying approval of the respondent's authority to
12 supervise physician assistants;

13 3. Ordering respondent to pay the Division the actual and reasonable costs of
14 the investigation and enforcement of this case and to pay the costs of probation monitoring upon
15 order of the Division; and

16 4. Taking such other and further action as the Division deems necessary and
17 proper.

18 DATED: October 31, 2005

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21 

22 **DAVID T. THORNTON**
23 Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California

27 Complainant

Exhibit A



Oregon

Theodore R. Kulongoski, Governor

Board of Medical Examiners

1500 SW 1st Ave Ste 620

Portland, OR 97201-5826

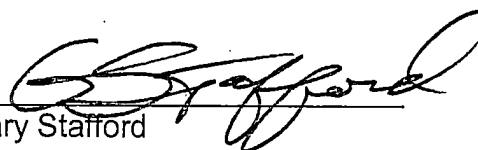
(503) 229-5770

FAX (503) 229-6543

www.bme.state.or.us

CERTIFICATION

I, Gary Stafford, state that I am the Chief Investigator of the Oregon Board of Medical Examiners and, as such, am the Custodian of Records of the Investigative Unit of said Board of Medical Examiners. I hereby certify that the attached copies of Orders and/or various other legal documents regarding **LAURA VANINI GROBOVSKY, MD (MD22573)** are true copies of the originals on file in said Investigative Unit.

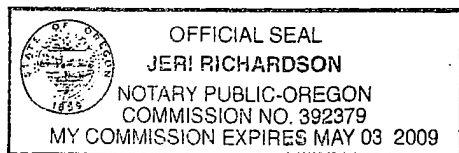

Gary Stafford

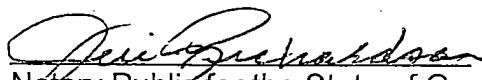
Date: August 25, 2005

(SEAL)



Subscribed and sworn to before me this 25th day of August, 2005.




Notary Public for the State of Oregon
My Commission Expires: 05/03/09

(SEAL)



Oregon

Theodore R. Kulongoski, Governor
VERIFICATION OF LICENSURE
August 25, 2005

Board of Medical Examiners

1500 SW 1st Ave Ste 620
Portland, OR 97201-5826
(503) 229-5770
FAX (503) 229-6543
www.bme.state.or.us

Licensee's Name: GROBOVSKY, LAURA VANINI MD

License Number: MD22573

Status: LAPSED

Type: MEDICAL PHYSICIAN AND/OR SURGEON

Date of Birth: [REDACTED]

Date Of Permanent License: 07/21/2000

Expiration Date: 12/31/03

Standing: PUBLIC ORDER ON FILE. SEE ATTACHED.

Specialty: ONCOLOGY

Limitations: NONE

Extensions: NONE

Mailing Address: 545 MEDICAL CENTER DR STE 300
MEDFORD, OR 97504

Business Phone : 541-772-5282

Gender: Female


School: EASTERN TN UNIV JH QUILLEN COL/MED
School Location: JOHNSON CITY, TN

Graduation Date: 05/08/93

Basis Of Oregon Licensure: COMBINATION OF NATIONAL BD, FLEX, USMLE

Advanced Education: 07/98 - 06/00 FELLOW
EAST TN STATE UNIV PROG JOHNSON CITY, TN
ONC ONCOLOGY
07/94 - 06/96 RESIDENT
EAST TN STATE UNIV PROG JOHNSON CITY, TN
I INTERNAL MEDICINE
07/93 - 06/94 INTERN
EAST TN STATE UNIV PROG JOHNSON CITY, TN
I INTERNAL MEDICINE



Prepared by 

Board Seal

(For definitions, see <http://www.bme.state.or.us/glossary.html>)

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BEFORE THE
BOARD OF MEDICAL EXAMINERS
STATE OF OREGON

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IN THE MATTER OF)
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LAURA VANINI GROBOVSKY, MD) FINAL ORDER
License No. MD 22573)
)

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HISTORY OF THE CASE

On November 7, 2003, the Board of Medical Examiners (Board) issued an order that Dr. Laura Vanini Grobovsky undergo a multi-disciplinary evaluation at a Board approved facility to assess her ability to safely practice medicine. This Order was based upon credible reports that Dr. Grobovsky had been observed to have the strong odor of alcohol on her breath at her place of work on September 5, 2003 while performing her duties as a licensed physician. Dr. Grobovsky did not comply with the Board's Order. On May 5, 2004, the Oregon Board of Medical Examiners (Board) issued a Complaint and Notice of Proposed Disciplinary Action to Dr. Grobovsky that proposed taking disciplinary action for her failure to comply with the Board's Order. On May 21, 2004, Dr. Grobovsky requested a hearing.

On August 6, 2004, the Board referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Andrea H. Sloan was assigned to preside at hearing. Prehearing conferences were convened on October 13, 2004, March 2, 2005, March 30, 2005 and March 31, 2005. The purpose of the prehearings was to focus the issues for hearing and address discovery concerns. During the prehearing conference, Dr. Grobovsky's counsel contended that they should be allowed to challenge the underlying basis and legal authority for the Board's Order for Evaluation. The Board's counsel argued that Dr. Grobovsky was barred from collaterally attacking the Order at the hearing because it was an order in other than a contested case which must be challenged in circuit court within 60 days from when the order is served, ORS 183.484(1). Because Dr. Grobovsky chose not to challenge the Order in a timely manner, she was precluded from raising the issue at a later time. The ALJ ruled that the Order was an order in other than a contested case which had become final by operation of law and that Dr. Grobovsky was legally precluded from challenging the Order during the contested case hearing.

In addition, the ALJ granted a motion to quash subpoena made by Oncology of Southern Oregon, and issued a protective order pursuant to OAR 137-003-0570(8). The subpoena sought the production of documents that arguably had relevance if the Order had been subject to challenge at the hearing and if the Board was seeking to impose discipline for Dr. Grobovsky being intoxicated on September 5, 2003. The Board's counsel stated that the sole basis for the Board's disciplinary action was Dr. Grobovsky's failure to comply with the Order for Evaluation. The ALJ opined that given the narrow scope of the hearing (whether Dr. Grobovsky has complied with the Order) and the fact that Dr. Grobovsky did not contest the facts underlying the Order for Evaluation, the evidence sought by the subpoena was irrelevant.

1 A hearing was held on April 6, 2005, in Portland, Oregon. Dr. Grobovsky appeared with
2 counsel, Christopher L. Cauble, and testified at the hearing. The Board was represented by
3 Warren Foote, Senior Assistant Attorney General for the Oregon Department of Justice.
4 Testifying on behalf of the Board were Don Short, Board Investigator; Dr. Grobovsky; and Gary
5 Jacobsen, MD, Board Consultant. Testifying on behalf of Dr. Grobovsky were Dr. Howard
6 Roback and Dr. Reid Finlayson. The record closed on April 26, 2005, following receipt of the
7 hearing transcript.
8

9 ISSUE

10
11 Whether Dr. Grobovsky violated the Medical Practice Act by failing to obey an order of
12 the Board and, if so, whether that failure constituted unprofessional or dishonorable conduct.
13 ORS 677.190(1) and (18).
14

15 EVIDENTIARY RULING

16
17 Exhibits A1 through A3, and the last three paragraphs of Exhibit A4 and A18, offered by
18 the Board, were admitted into the record. Exhibits L1 through L3 were admitted into the record.
19

20 Exhibits A5 through A17 and the balance of A4 were received as an offer of proof. In
21 addition, the parties submitted hearing memoranda, which included written offers of proof.
22

23 FINDINGS OF FACT

24
25 1: At the time of hearing, Dr. Grobovsky held active medical licenses in California and
26 Tennessee. Dr. Grobovsky's Oregon medical license expired in 2003 (although the ALJ used the term
27 "expired," the correct term is "lapsed" per OAR 847-008-0005). (Testimony of Dr. Grobovsky; tr. 15-
28 16.)
29

30 2. On November 7, 2003, the Board ordered Dr. Grobovsky to undergo a comprehensive
31 evaluation to assess her fitness to practice medicine safely. The evaluation was ordered after the
32 Board became aware that some of Dr. Grobovsky's colleagues at Oncology of Southern Oregon
33 suspected that she had a strong odor of an alcoholic beverage on her breath while at work on two
34 occasions in September 2003. In addition, the colleagues reported that on one of these occasions,
35 Dr. Grobovsky appeared to have trouble concentrating and staying awake while at work. The
36 Board ordered the following:
37

38 Licensee shall undergo an independent, multidisciplinary evaluation to assess
39 her physical and mental capacity to safely and competently practice medicine
40 in the state of Oregon. The multidisciplinary evaluation will be done at a
41 health care facility *approved by the Board's Medical Director*.
42

43 The evaluating center or clinic will provide a copy of a complete written
44 evaluation from the multidisciplinary team directly to the Board *within 60 days*
45 of the date this Order is signed by the Board Chair. Licensee will sign releases
46 to allow for any communication between the Board and evaluators.
47

1 The costs of such an evaluation will be borne by Licensee. (Ex. A2 at 2.)
2 (Emphasis added.)
3

4 3. On December 27, 2003, Dr. Grobovsky informed the Board that she would not renew
5 her Oregon license, and that she did not intend to undergo the evaluation ordered by the Board.
6 (Ex. A4, final three paragraphs.)
7

8 4. As of the date of hearing, Dr. Grobovsky had never sought approval by the Board's
9 Medical Director for a multidisciplinary evaluation. (Testimony of Dr. Grobovsky and
10 Mr. Short; tr. at 16, 22.)
11

12 5. Starting on September 30, 2004, Dr. Grobovsky underwent an evaluation at the
13 Vanderbilt Comprehensive Assessment Program (VCAP) in Tennessee. Dr. Grobovsky self-
14 referred to the program, where she spent several days in testing and interviews. (Testimony of
15 Dr. Finlayson; tr. 32-33.) Dr. Grobovsky did not ask for or obtain approval from the Board's
16 Medical Director to undergo an evaluation at VCAP.
17

18 6. At the time of hearing, VCAP had been operating between two and one-half and three
19 years. To date, VCAP has evaluated approximately 100 people, about 50 of whom were
20 evaluated for possible substance abuse. (Testimony of Dr. Finlayson; tr. 28 and 42.)
21

22 7. As part of the evaluation, Dr. Grobovsky submitted to blood and urine tests designed
23 to detect ethanol in the bloodstream, and a battery of tests designed to classify existing
24 psychopathology, personality and psychiatric disorders. (Testimony of Dr. Roback; tr. 66, 73-
25 75.) VCAP did not subject Dr. Grobovsky to an ethanol glucuronide (ETG) test, which can
26 detect a direct metabolite of ethanol which persists in the body 92 hours after consumption,
27 because at that time, VCAP did not know that the test was available. (Testimony of Dr.
28 Finlayson, tr. 46).
29

30 8. Dr. Grobovsky gave VCAP permission to interview certain former employers at
31 Oncology of Southern Oregon, and also provided VCAP with notarized statements from a
32 number of people from Oncology of Southern Oregon and the Rogue Valley Medical Center.
33 (Ex. L3.) Dr. Grobovsky provided VCAP with a copy of the Board's order, but did not authorize
34 VCAP staff to speak with anyone at the Board or with the Oregon Physician's Diversion
35 Program. (*Id.*; testimony of Dr. Finlayson; tr. 46-47.) VCAP staff interviewed Dr. Lemanne, a
36 partner from Oncology of Southern Oregon, but did not interview any of the clinic employees
37 who had reported smelling an odor of an alcoholic beverage on Dr. Grobovsky at work in
38 September 2003. (Testimony of Dr. Finlayson; tr. 48.) In conducting their collateral
39 investigation, VCAP staff relied exclusively upon the statements provided to them by Dr.
40 Grobovsky and the interviews they conducted with persons from a specific list provided to
41 them by Dr. Grobovsky (tr. at 47).
42

43 9. Following its assessment, VCAP staff prepared an eight page report, summarizing
44 their findings. (Ex. L3.) The report does not contain any information about a family history of
45 alcohol use or abuse. (*Id.*) The report briefly mentions, but does not analyze or follow-up on the
46 allegation that Dr. Grobovsky appeared at work with an odor of an alcoholic beverage. (Ex. L3
47 at 5.)

10. The evaluation would have been more accurate and complete if VCAP staff had been allowed to contact the Board and the Oregon Physician's Diversion Program, if the report contained information about Dr. Grobovsky's family history concerning substance abuse, and if VCAP staff had conducted a complete collateral investigation, to include reviewing the statements and interviewing clinic personnel that had detected the smell of alcohol on Dr. Grobovsky's breath and reviewing Board investigative documents. (Testimony of Dr. Finlayson; tr. 40, 47-49.)

11. VCAP concluded that there was "insufficient evidence of alcohol dependence or significant alcohol abuse in Dr. Grobovsky at this time, or historically." (Ex. L3 at 8). Dr. Finlayson limited his opinion by saying that, at the time of the evaluation, Dr. Grobovsky did not have a problem with alcohol. (Testimony of Dr. Finlayson; tr. 58.)

12. As a group, physicians are very reluctant to admit even minor faults in themselves. (Testimony of Dr. Roback; tr. 87.) Dr. Grobovsky underwent a Minnesota Multiphasic Personality Inventory (MMPI) at VCAP, which found a marked defensive test-taking attitude and that she was trying to present herself in an extremely positive manner. (Testimony of Dr. Findlayson, tr. at 45).

13. The odor of an alcoholic beverage on the breath of a physician in the workplace is a red flag that the physician should be evaluated for possible alcohol abuse. (Testimony of Dr. Findlayson, tr. at 53; Dr. Jacobson; tr. 103). And the disease of addiction is almost always in an advanced state for physicians prior to signs and symptoms becoming obvious in the workplace. (Dr. Finlayson answered in response to this statement "That's usually so." tr. at 53).

14. The Board concludes that Dr. Grobovsky did not comply with the Board's order when she underwent the VCAP evaluation, and the Board does not find the VCAP evaluation to be helpful in determining whether Dr. Grobovsky has a diagnosis for substance abuse or dependence, nor in assessing whether she is safe to practice medicine. The Board finds the VCAP evaluation report deficient in several respects, it failed to report on Dr. Grobovsky's family history for substance use/abuse, it reflected an incomplete collateral investigation by allowing Dr. Grobovsky to control the information VCAP relied upon in making its conclusions, it failed to address the statements by clinic employees (other than interviewing Dr. Lemanne) that detected alcohol on Dr. Grobovsky's breath on September 5, 2003, and VCAP appeared to discount the significance of Dr. Grobovsky having alcohol on her breath while on duty as a physician in arriving at its conclusions.

CONCLUSION OF LAW

Dr. Grobovsky violated the Medical Practice Act by failing to obey an order of the Board, and that failure constituted unprofessional or dishonorable conduct. ORS 677.190(1) and (18).

OPINION

"The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." ORS 183.450(2). Here, the Board has the burden of proving its allegations. *See, Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding

1 allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook*
2 *v. Employment Div.*, 47 Or App 437 (1980). (in the absence of legislation adopting a different
3 standard, the standard in administrative hearings is preponderance of the evidence). Proof by a
4 preponderance of evidence means that the fact finder is persuaded that the facts asserted are
5 more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).
6

7 The Board's counsel argued that Dr. Grobovsky violated the Medical Practice Act by
8 willfully violating an Order of the Board, which is both a separate violation of ORS
9 677.190(18), as well as evidence of unprofessional or dishonorable conduct in violation of ORS
10 677.190(1). Dr. Grobovsky countered that she complied with the "spirit" of the Board's Order,
11 and that she should not be required to submit to another evaluation. For the reasons set forth
12 below, the Board concurs with the ALJ's findings that the Board met its burden.
13

14 In addition, the Board endorses the ALJ's ruling that Dr. Grobovsky was barred from
15 collaterally attacking the Order for Evaluation at the contested case hearing. The Board notes
16 that licensees are deemed to have given consent to mental or physical examinations when so
17 directed by the Board, ORS 677.420. This recognizes the public safety imperative that the
18 Board be able to fully investigate licensees that may be subject to some form of physical or
19 mental impairment, in order for the Board to protect the health, safety and welfare of the public,
20 see ORS 677.015. Further, orders for evaluation are orders in other than a contested case that
21 are subject to review in circuit court, ORS 183.484. Therefore, licensees and applicants that
22 want to challenge the reasonableness of such an order must file a petition for review within 60
23 days following the date the order is served, ORS 183.484(2). Otherwise, they are barred from
24 doing so later.
25

26 *Violation of Medical Practice Act* 27

28 The Board is charged with granting licensure and regulating the practice of medicine to
29 protect the health, safety and welfare of the people of Oregon by preventing unqualified or
30 unauthorized persons from practicing, and by protecting the public from unprofessional conduct
31 of licensees. ORS 677.015.
32

33 The Board is also authorized to refuse to grant, or to suspend or revoke a license to
34 practice for several reasons, including for "willfully violating any * * * board order * * *." ORS
35 677.190(18).
36

37 ORS 677.420 authorizes the Board to direct a licensee to submit to a competency
38 examination:
39

40 (1) Notwithstanding any other provisions of this chapter, the Board of Medical
41 Examiners for the State of Oregon may at any time direct and order a mental,
42 physical or medical competency examination or any combination thereof, and
43 make such investigation, including the taking of depositions or otherwise in
44 order to fully inform itself with respect to the performance or conduct of a
45 licensee.
46
47

(2) If the board has reasonable cause to believe that any licensee is or may be unable to practice medicine or podiatry with reasonable skill and safety to patients, the board shall cause a competency examination of such licensee for purposes of determining the fitness of the licensee to practice medicine or podiatry with reasonable skill and safety to patients.

(3) Any licensee by practicing or by filing a registration to practice medicine or podiatry shall be deemed to have given consent to submit to mental or physical examination when so directed by the board and, further, to have waived all objection to the admissibility of information derived from such mental or physical or medical competency examination on the grounds of privileged communication.

(4) The board may request any medical organization to assist the board in preparing for or conducting any medical competency examination that the board may consider appropriate.

Within this authority, on November 7, 2003, the Board ordered Dr. Grobovsky to undergo a comprehensive multidisciplinary evaluation to determine her fitness to continue practicing medicine. The Order was issued after the Board received information that co-workers had detected an odor of an alcoholic beverage on Dr. Grobovsky while she was at work. By the terms of the Order, Dr. Grobovsky was required to submit to a multidisciplinary evaluation, at a health care center approved by the Board's Medical Director, within 60 days of the date of the Order.

This record conclusively establishes that Dr. Grobovsky did not submit to a multidisciplinary evaluation within 60 days of November 7, 2003. Indeed, Dr. Grobovsky told the Board on December 27, 2003, that she would not comply with the Board's order. While she did ultimately undergo an evaluation, Dr. Grobovsky never sought approval for the VCAP evaluation from the Board's Medical Director.

The Board also argued that Dr. Grobovsky's disobedience of a Board order was unprofessional or dishonorable conduct, in violation of ORS 677.190(1), because she showed a lack of respect for the Board's authority to regulate the practice of medicine in Oregon. "Unprofessional or dishonorable conduct" means conduct unbecoming a person licensed to practice medicine or podiatry, or detrimental to the best interests of the public* * *." ORS 677.188(4).

By disregarding and violating the Order, Dr. Grobovsky demonstrated her disrespect for the Board. Such disrespect is unbecoming to a person licensed to practice medicine. Moreover, the purpose of the Order was to determine Dr. Grobovsky's fitness to practice medicine; protecting the public from unqualified physicians is one of the Board's primary responsibilities. Dr. Grobovsky's refusal to comply with the Order was detrimental to the public's best interest.

Dr. Grobovsky's argument, that she complied with the "spirit" of the Board's order, and that any violation was *de minimis*, is not persuasive. The Order was unambiguous and within the authority of the Board to issue. Dr. Grobovsky told the Board that she had no intention of

1 complying with its Order and that she did not respect the Board's authority. Dr. Grobovsky did
2 not comply with the Order and, as a result, she is subject to discipline for violating ORS
3 677.190(1) and (18).

4
5 *Sanction*

6
7 The Board's counsel argued at the hearing that Dr. Grobovsky should be
8 subject to the following sanctions:

- 9
10 • Reprimand.
11 • Costs of hearing.
12 • Suspension for a minimum of 30 days, to continue until such time as she
13 complies with the Board's Order for Evaluation.
14 • Abstention from alcohol and non-prescribed controlled substances.
15 • Comply with all treatment recommendations made by the approved evaluation
16 center.
17 • Be placed on probation and appear before the Board for quarterly interviews,
18 but that this condition of probation be held in abeyance as long as Dr.
19 Grobovsky is not practicing medicine in the state of Oregon.
20

21 Dr. Grobovsky countered that, because she has already paid for and submitted to a
22 comprehensive evaluation, she should not be required to undergo an additional evaluation.
23

24 ORS 677.205 authorizes the Board to sanction a licensee for violations of the Medical
25 Practice Act. "The Board of Medical Examiners for the state of Oregon may discipline as
26 provided in this section any person licensed, registered or certified under this chapter who has:
27 * * * (b) Been found to be in violation of one or more of the grounds for disciplinary action of a
28 licensee as set forth in this chapter * * * *." For example, the Board may assess costs of the
29 disciplinary action. ORS 677.205(2)(f).
30

31 The ALJ concluded that Dr. Grobovsky violated the Medical Practice Act while she was
32 actively licensed by the state of Oregon. Therefore, the ALJ reasoned that the Board has the
33 authority to impose sanctions based on her violation of statute. But the ALJ opined that the
34 Board was limited in the sanctions it could impose. The ALJ stated that although it was
35 appropriate that the Board reprimand Dr. Grobovsky and assess costs of the disciplinary
36 proceeding, it could not suspend or revoke because Dr. Grobovsky's license lapsed on December
37 31, 2003. The ALJ erred in opining that although the Board generally has the authority to
38 suspend or revoke a medical license (ORS 677.205(2)(c) and (d)),¹ in this case there was no
39 license to suspend.
40

41
42 ¹ ORS 677.205(2) provides as follows:

43 (2) In disciplining a licensee as authorized by subsection (1) of this section, the board
44 may use any or all of the following methods:

- 45 (a) Suspend judgment.
46 (b) Place the licensee on probation.
47 (c) Suspend the license.

1 OAR 847-008-0005 provides, in part, as follows:
2

3 Every licensee of the Board shall renew their registration prior to the last day
4 of each renewal period as follows:
5

6 (1) The registration renewal form and fee for Doctors of Medicine, Doctors of
7 Osteopathy, Doctors of Podiatric Medicine and Physician Assistants must be
8 received in the Board office during regular business hours on or before
9 December 31 of each odd-numbered year.
10

11 According to OAR 847-008-0015, "Each licensee of the Board who practices within the
12 State of Oregon, shall register and pay a biennial active registration fee prior to the last day of
13 the registration period * * *." If a physician fails to timely renew, his or her license lapses by
14 operation of law. OAR 847-008-0045(2) ("A license or certification shall lapse if not received in
15 the Board office during regular business hours on or before the final day of the registration
16 period.") Dr. Grobovsky alerted the Board on December 27, 2003, that she did not intend to
17 renew her license. In addition, Dr. Grobovsky stated in a letter to the Board on January 21, 2004
18 that: "I have left medicine. I no longer hold an Oregon medical license and to (sic) not wish to
19 have one." (Ex. A7). (The Board can confirm that Dr. Grobovsky's medical license lapsed on
20 January 1, 2004). In addition, Dr. Grobovsky testified at the hearing that her Oregon medical
21 license had expired.
22

23 Based upon her interpretation of the Board's rules and case precedent, the ALJ concluded
24 that the Board does not have jurisdiction to suspend Dr. Grobovsky's license, because the license
25 no longer exists. To support her conclusion, the ALJ cited the case of *Schurman v. Bureau of*
26 *Labor*, 36 Or App 841, 844 (1978) ("[w]here no license exists, the Bureau is without jurisdiction
27 to act.") The ALJ thought that the operative facts in *Schurman* were strikingly similar to the
28 facts in Dr. Grobovsky's case. In *Schurman*, the petitioner was advised in November 1976 that
29 the Bureau proposed to revoke or suspend his license. The applicable license renewal statute
30 provided that licenses would expire on December 31 of each year, and renewal applications had
31 to be made before January 1 of each year. Petitioner did not renew his license, so it expired on
32 December 31, 1976. After his license expired, the Bureau held a revocation hearing. Petitioner
33 moved to dismiss for lack of jurisdiction. The motion was denied and the Bureau ordered the
34 revocation of petitioner's license. The court's decision was premised on the fact that the Bureau
35 had authority to take action on a license. Because the petitioner did not have a license, there was
36 nothing for the Bureau to revoke. *See also, Red Willow v. CSD*, 152 Or App 710, 714 (1998)
37 (the court affirmed *Schurman* by stating, "When the license expired there was nothing left upon
38 which the agency could act.")
39
40
41

42 (d) Revoke the license.
43

44 (e) Place limitations on the license.
45

46 (f) Take such other disciplinary action as the board in its discretion finds
47 proper, including assessment of the costs of the disciplinary proceedings as a civil
penalty or assessment of a civil penalty not to exceed \$5,000, or both.

1 This discussion by the ALJ overlooks the continuing jurisdiction provided to the Board
2 by statute: "The surrender, retirement or other forfeiture, *expiration* or cancellation of a license
3 issued by the board shall not deprive the board of its authority to institute or continue a
4 disciplinary action against the licensee upon any ground provided by law." [Emphasis added].
5 As a result, the Board is not precluded from revoking or suspending a license that Dr. Grobovsky
6 allowed to lapse. To do otherwise would allow a licensed physician to frustrate the regulatory
7 process by allowing a professional license to lapse. See *Pahl v. Board of Chiropractic*
8 *Examiners*, 164 Or App 378 (1999). In this case, the actions of Dr. Grobovsky are transparent—
9 she was subject to the Board's Order for Evaluation before her license lapsed, and she
10 subsequently refused to appear for an investigative interview. Her decision to allow her license
11 to lapse did not divest the Board of its authority to exercise disciplinary authority over her, to
12 include imposing any sanction authorized by law (see ORS 677.205(2)).
13

14 In this case, the ALJ recommended that, in lieu of suspension and placing conditions on
15 Dr. Grobovsky's license, that the Board reprimand Dr. Grobovsky and impose conditions for
16 reinstatement of her Oregon license. While we agree with the ALJ that Dr. Grobovsky should be
17 sanctioned, her recommendations pertaining to the specific sanctions to be imposed do not
18 adequately protect the public from a physician that may be impaired.
19

20 EXCEPTIONS TO THE PROPOSED ORDER 21

22 Dr. Grobovsky, through her counsel, filed a number of exceptions to the ALJ's proposed
23 order, which we now address. The Board has reviewed each exception and concludes that they
24 are without merit. The Board offers the following discussion in regard to the exceptions.
25

26 Dr. Grobovsky's first contention was that the ALJ erred in not admitting her exhibits and
27 in finding that the Board's Order for Evaluation was a final order in other than contested case
28 and, therefore, the ALJ should have allowed her to contest whether she had been observed to
29 have the strong odor of alcohol by co-workers.
30

31 The Board disagrees with Dr. Grobovsky's assertions and agrees with the ALJ's Ruling
32 On Motion to Quash, dated March 30, 2005. We first note that Dr. Grobovsky consented to
33 submitting to the evaluations ordered by operation of law. ORS 677.420 provides that the Board
34 may at any time direct and order a mental, physical or medical competency examination and that
35 licensees "shall be deemed to have given consent to mental or physical examination when so
36 directed by the board and, further, to have waived all objection to the admissibility of
37 information derived from such mental or physical or medical competency examination on the
38 grounds of privileged communication." Dr. Grobovsky did not seek judicial review of that order
39 and the time to do so had expired. Dr. Grobovsky therefore legally consented to submit to the
40 evaluations ordered by the Board.
41

42 But even if that statutory waiver did not apply to the present case, Dr. Grobovsky was
43 barred from collaterally attacking the Order in this proceeding. The Board agrees with the ALJ
44 that Board orders for mental health, physical condition, or chemical dependency evaluations
45 under ORS 677.420 are final orders in other than a contested case under ORS 183.310(6).
46 Orders for evaluation represent a final agency action directed to a person and does not result in
47 one of the four kinds of proceedings that are defined as a "contested case" under ORS

1 183.310(2)(a). In her exceptions, Dr. Grobovsky contends that the Order for Evaluation “was
2 only a first step in the disciplinary process.” But this assertion highlights a misunderstanding of
3 the process. Orders for evaluation are designed to determine or rule out a diagnosis. Discipline
4 is not the inevitable result of complying with a board ordered evaluation. Sometimes an
5 evaluation rules out a diagnosis for chemical abuse or dependence, or is inconclusive. Even
6 when an evaluation concludes that a licensee is chemically dependent, the usual course is for a
7 licensee to go into treatment and enroll in the Board’s diversion program—sometimes without
8 disciplinary action being imposed.

9
10 Dr. Grobovsky failed to request a timely review of the Order for Evaluation. As a result,
11 she was legally precluded from challenging the Order and the underlying basis for that Order
12 during the contested case hearing.

13
14 Dr. Grobovsky also challenged a number of the ALJ’s findings of fact, which the Board
15 has considered, and rejected. The exception to the second finding of fact invites the Board to
16 review the evidence relied upon in issuing the Order for Evaluation. This is yet another attempt
17 to collaterally attack that Order in the present proceeding. The Order stands.

18
19 Dr. Grobovsky wanted to add to the finding of fact number six that VCAP was the
20 primary referral for physicians and other professionals in the State of Tennessee. The Board will
21 note that based on the record, at the time of the hearing, VCAP had been operational for about 30
22 months and that most of their referrals came from the Tennessee Medical Foundation, as well as
23 referrals from the medical boards in Arkansas and Mississippi (tr. at 29, 42).

24
25 The Board rejects the exception to finding of fact number eight that VCAP was “never
26 prohibited from interviewing anyone in relation to its evaluation.” The Board notes that when
27 asked if anyone from the VCAP assessment team contacted the Board or the diversion program,
28 Dr. Finlayson answered that they didn’t have Dr. Grobovsky’s permission to do so (tr. at 47).

29
30 Dr. Grobovsky also seeks to change findings of fact numbers nine and ten, in which she
31 provides speculation as to why the VCAP evaluation did not state a family history for substance
32 abuse and that Dr. Finlayson and the VCAP report did not find a basis or evidence that Dr.
33 Grobovsky was ever “under the influence of alcohol or has an alcohol problem.” These findings
34 are not germane to the issue of whether Dr. Grobovsky complied with the Board order, and
35 merely highlight the need for a complete evaluation at a board approved facility where all the
36 available information will be presented for the evaluation team to consider.

37
38 The exceptions to findings of fact numbers twelve and thirteen are argumentative and
39 represent further attempts to collaterally attack the Order for Evaluation.

40
41 Dr. Grobovsky also challenged the conclusions of law, contending that it was
42 inappropriate for the Board to order an evaluation without allowing her to challenge the findings.
43 That question has already been resolved—she had the opportunity to challenge the order and
44 declined to do so. The record is clear--Dr. Grobovsky failed to obey the Board’s Order for
45 Evaluation.

1 Dr. Grobovsky also contends that the Board lacks the jurisdiction to impose any
2 discipline, to include a reprimand or costs. The Board rejected the ALJ's view that its authority
3 to impose sanctions was limited due to the lapse of her license. The lapse of a license does not
4 deprive the Board of its authority to institute or continue a disciplinary action, ORS 677.175(3).
5

6 ORDER
7

8 The Board hereby orders that Dr. Grobovsky receive the following sanction:
9

- 10 1. Reprimand.
- 11
- 12 2. Dr. Grobovsky is assessed a \$3,000 fine to be paid within 60 days from the date this
13 Order is signed by the Board Chair.
- 14
- 15 3. Dr. Grobovsky is assessed the full costs of this disciplinary proceedings to be paid
16 within 6 months from the date the Board's Executive Director signs the "Bill of
17 Costs" notice.
- 18
- 19 4. Dr. Grobovsky's Oregon medical license is suspended for a minimum of 30 days,
20 effective immediately. This suspension will remain in effect until the following
21 conditions are satisfied:
22
 - 23 a. Dr. Grobovsky fully complies with the Board's order to undergo a
24 comprehensive multi-disciplinary evaluation at a health care facility
25 approved by the Board's Medical Director. Before the Board considers the
26 evaluation complete, the Board must receive the entire evaluation report
27 and have the opportunity to review it no less than 10 days prior to the next
28 scheduled quarterly Board meeting.
 - 29
 - 30 b. The evaluation report must conclude that Dr. Grobovsky is safe to practice
31 medicine.
 - 32
 - 33 c. Dr. Grobovsky must demonstrate to the satisfaction of the Board that she
34 is in full compliance with any treatment and monitoring recommendations
35 (if any) contained in the multi-disciplinary evaluation report.
 - 36
 - 37 d. Dr. Grobovsky must sign releases to allow for full communication
38 between the evaluators and the Board.
 - 39
 - 40 e. Dr. Grobovsky will abstain from the consumption of ethanol or any
41 controlled substance not prescribed by her treating physician. Dr.
42 Grobovsky will fully cooperate with any random or no notice directed
43 testing for alcohol or controlled substances ordered by the Board's
44 Compliance Officer.
 - 45
 - 46 f. Dr. Grobovsky will pay the costs of the evaluation.
 - 47

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5. Dr. Grobovsky will be placed on probation which will be stayed during the course of her license suspension.
 6. While on probation, Dr. Grobovsky will be required to continue compliance with all treatment and monitoring recommendations (if any) contained in the multi-disciplinary evaluation report.
 7. Upon the commencement of Dr. Grobovsky's probation, Dr. Grobovsky shall be subject to quarterly Board interviews, which the Board may waive as long as Dr. Grobovsky is not practicing medicine in the state of Oregon.

DATED this 14 day of July, 2005.

BOARD OF MEDICAL EXAMINERS
State of Oregon


JOSEPH J. THALER, MD
BOARD CHAIR

Right to Judicial Review

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of service is the day it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60 days time period, you will lose your right to appeal.

APPENDIX A
LIST OF EXHIBITS CITED

- Ex. A2: Order for Evaluation
- Ex. A4: Letter to the Board from Dr. Grobovsky, dated December 27, 2003
- Ex: L3: VCAP evaluation report

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BEFORE THE
BOARD OF MEDICAL EXAMINERS
STATE OF OREGON

In the Matter of)
LAURA VANINI GROBOVSKY, MD)
LICENSE NO. MD22573) COMPLAINT AND NOTICE OF
PROPOSED DISCIPLINARY ACTION

1.

The Board of Medical Examiners (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the State of Oregon. Laura Vanini Grobovsky, MD (Licensee) is a licensed physician in the State of Oregon.

2.

The Board proposes to take disciplinary action pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); and ORS 677.190(18) willfully violating any Board statute, or any rule adopted by the Board or Board order or failing to comply with a Board request pursuant to ORS 677.320.

3.

The acts and conduct alleged to violate the Medical Practice Act are:

3.1 On September 5, 2003, Licensee was possibly impaired while on duty at her practice location at Southern Oregon Oncology in Medford by her consumption of alcohol. Licensee was observed by several members of the clinic staff to have a strong odor of alcohol on her person. Licensee was observed to have difficulty staying on task and staying awake during the course of the day. Licensee admitted to having consumed a large amount of alcohol the night before coming to coming to work. Licensee subsequently promised not to consume alcohol again. Nevertheless, on September 26, 2003, Licensee was noted to have

1 the strong odor of alcohol on her person when she turned over a shared pager to a co-worker
2 at the end of Licensee's on call duty.

3 3.2 Based upon receiving credible information set forth in paragraph 3.1 above,
4 representatives of the Board asked Licensee to voluntarily undergo a multi-disciplinary
5 evaluation to determine if she was safe to practice medicine due to possible substance abuse.
6 Licensee declined to do so. On November 7, 2003, the Board ordered Licensee to undergo a
7 comprehensive evaluation for the purpose of determining her fitness to practice medicine with
8 reasonable skill and safety to patients. Licensee was ordered to undergo a multi-disciplinary
9 evaluation and to sign the necessary release for this facility to send a copy of its complete
10 written evaluation directly to the Board. To date, Licensee has not complied with this Order.
11 In addition, on December 27, 2003, Licensee sent an unsolicited letter informing the Board
12 that she denied being intoxicated, implied that she would not undergo the ordered evaluation,
13 and that she "did not want to hold an Oregon license and have not bothered to renew it."

14 4.

15 Licensee is entitled to a hearing as provided by the Administrative Procedures Act
16 (chapter 183), Oregon Revised Statutes. Licensee may be represented by counsel at the
17 hearing. If Licensee desires a hearing, the Board must receive Licensee's written request for a
18 hearing within twenty-one (21) days of the mailing of this Notice to Licensee. Upon receipt
19 of a request for a hearing, the Board will notify Licensee of the time and place of the hearing.

20 5.

21 If Licensee requests a hearing, Licensee will be given information on the procedures,
22 right of representation, and other rights of parties relating to the conduct of the hearing as
23 required under ORS 183.413(2) before commencement of the hearing.

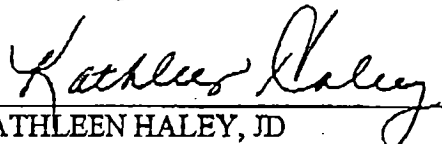
24 6.

25 Failure by Licensee to request a hearing or failure to appear at any hearing scheduled
26 by the Board will constitute waiver of the right to a contested case hearing and will result in a
27 default order by the Board, including the assessment of such penalty and costs as the Board

1 deems appropriate under ORS 677.205. If a default order is issued, the record of proceeding
2 to date, including Licensee's file with the Board and any information on the subject of the
3 contested case automatically becomes a part of the contested case record for the purpose of
4 proving a prima facie case per ORS 183.415(6).

5
6 DATED this 5th day of May, 2004.

7
8 BOARD OF MEDICAL EXAMINERS
9 State of Oregon

10 
11 KATHLEEN HALEY, JD
12 EXECUTIVE DIRECTOR

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VERIFICATION

STATE OF OREGON

County of Multnomah

)
): ss
)

I, KATHLEEN HALEY, being first duly sworn, state that I am the Executive Director of the Board of Medical Examiners of the State of Oregon, and as such, am authorized to verify pleadings in this case; and that the foregoing Complaint and Notice of Proposed Disciplinary Action is true to the best of my knowledge as I verily believe.


KATHLEEN HALEY, JD
EXECUTIVE DIRECTOR

SUBSCRIBED AND SWORN to before me this 10th day of May, 2004.


NOTARY PUBLIC FOR OREGON
My Commission Expires: 10-24-07

